

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,

Defendants.

Case No. 3:21-cv-03302-MGL-TJH-RMG

**SENATE DEFENDANTS' & HOUSE
DEFENDANTS' OPPOSITION TO
PLAINTIFF' MOTION *IN LIMINE* TO
PRECLUDE LAY TESTIMONY
CONCERNING EXPERT TOPICS**

Plaintiffs' Motion *In Limine* To Preclude Lay Testimony Concerning Expert Topics (Dkt. No. 352) is another example of Plaintiffs asking the Court to unfairly limit the Senate Defendants' and the House Defendants' defense of this case. The Court should deny it for at least four reasons.

First, Plaintiffs do not specify what would constitute allegedly improper lay witness testimony that the Congressional Plan "satisfied . . . redistricting criteria, such as compactness" or "can be justified by other quantitative metrics such as 'core retention,' partisan performance, and effectiveness." Dkt. No. 352 at 2. Plaintiffs relegate to a footnote a list of purported examples, *see id.* at 5 n.5, but that list is wholly unilluminating. For example, some of those examples involve purely factual questions asking how the witness "tr[ie]d to make sure the districts were compact," W. Jordan Dep. (cited at Dkt. No. 355 at 5 n.5), or how "partisan considerations factored into the development of this plan," B. John Dep. (cited at Dkt. No. 355 at 5 n.5). Others are legislator statements describing the Congressional Plan as a "minimal change plan" or stating that the Congressional Plan "generally adhere[s] to the previous boundaries" in the Benchmark Plan that was upheld by this Court and the United States Supreme Court in *Backus v. South Carolina*, 857

F. Supp. 2d 553, 557 (D.S.C.), *aff'd*, 568 U.S. 801 (2012). *See* Campsen Statements & House Proceeding (cited at Dkt. No. 355 at 5 n.5).

None of these examples addresses whether the Congressional Plan “satisfied . . . redistricting criteria, such as compactness” or “can be justified by other quantitative metrics such as ‘core retention,’ partisan performance, and effectiveness.” Dkt. No. 352 at 2. Moreover—and more to the point—*none* involves expert opinion. To the contrary, these examples involve testimony within the witness’s own “personal knowledge” of events or “firsthand perception” of the Congressional Plan, which even Plaintiffs concede is a proper realm of lay testimony. Dkt. No. 352 at 4 n.3.

Second, Plaintiffs do not describe what type of testimony they hope to exclude under the description of testimony that the Congressional Plan “can be justified.” *Id.* at 2. To the extent Plaintiffs mean to say that *all* opinion testimony—including expert opinion—offering a “legal conclusion” about the validity of the Congressional Plan is inadmissible, *United States v. Barile*, 286 F.3d 749, 760 (4th Cir. 2002), they are correct. But to the extent that they suggest that legislators and staffers cannot testify as to their own motivations, actions, and beliefs related to the Congressional Plan or their own “personal knowledge” or “firsthand perception” of the Plan and events leading to its enactment, they are incorrect. *See* Dkt. No. 352 at 4 n.3.

Third, in all events, legislators, staffers, and other lay witnesses may testify, and even offer opinions, regarding the “partisan performance” and political “effectiveness” of districts and redistricting plans. *Id.* “Politics and political considerations are inseparable from districting and apportionment.” *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). “The political profile of a State, its party registration, and voting records are available precinct by precinct, ward by ward.” *Id.*

Accordingly, when this data is “overlaid on a census map, it requires no special genius to recognize the political consequences of drawing a district line along one street rather than another.” *Id.*

Moreover, of course, legislators and staffers may testify to partisan performance and political effectiveness based upon their “personal knowledge” or “firsthand perception,” Dkt. No. 352 at 4 n.3, of districts, redistricting plans, and partisan data related to districts and plans such as the data the General Assembly made publicly available on the Senate and House redistricting websites, *see, e.g.*, <https://redistricting.scsenate.gov/census.html>. Plaintiffs cannot seriously argue otherwise, since they seek to adduce lay witness testimony regarding the political “impact” of the Congressional Plan in certain “communities of interest.” Dkt. No. 335 at 5.

Fourth, Plaintiffs are also incorrect to the extent that they imply that legislators and staffers may not testify regarding statistics and other purely factual information regarding “compactness, core retention, partisan performance, and effectiveness.” *Id.* at 2. Throughout the depositions in this case, Plaintiffs have presented documents with statistics related to compactness, core retention, and partisan performance (many of which are publicly available) to legislators or staffers and asked them to confirm the contents of the documents. *See, e.g.*, Fiffick Tr. 268:20-269:6 (Ex. 1). Plaintiffs cannot now argue that such factual testimony based upon a legislator’s or staffer’s personal knowledge or firsthand perception is improper.

For all of these reasons, the Court should deny Plaintiffs’ Motion *In Limine* To Preclude Lay Testimony Concerning Expert Topics.

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Respectfully submitted,

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